IN THE

# Supreme Court of the United States

..... TERM, 1943

NO. 767

MARCO REGINELLI,
*Petitioner,*

vs.

UNITED STATES OF AMERICA,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

and

## BRIEF IN SUPPORT THEREOF

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IN THE SUPREME COURT OF THE UNITED STATES

February Term, 1943

*Marco Reginelli, Petitioner*
*vs.*
*United States of America, Respondent*

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT**

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Your petitioner respectfully represents:

## I

## SUMMARY STATEMENT OF MATTER INVOLVED

The petitioner was indicted in the District Court for the District of New Jersey for violation of the White Slave Traffic Act (18 U. S. C. A. 398, 399).

The indictment contained three counts charging, inter alia, as follows (R. 3a):

1. That the petitioner "did wilfully, unlawfully and feloniously, knowingly aid and assist in obtaining transportation for and in transporting in interstate commerce" one Louise Abate, "with intent and purpose * * * to induce,

entice and compel the said Louise Abate" to have sexual intercourse with him.

2. That the petitioner "did wilfully, unlawfully and feloniously, knowingly persuade, induce and entice and aid and assist in persuading, inducing and enticing" the said Louise Abate to go in interstate commerce from Camden, New Jersey to Miami, Florida "for the immoral purpose of illicit sexual intercourse with him" and "did thereby and by means of such persuading, inducing and enticing, knowingly cause and aid and assist in causing the said Louise Abate to go and to be carried and transported in interstate commerce."

3. That the petitioner did wilfully, unlawfully and feloniously, knowingly transport and cause to be transported in interstate commerce said Louise Abate "with the intent and purpose * * * to induce, entice and compel the said Louise Abate to engage in the immoral practice of illicit sexual intercourse with him."

The Government called as its first witness, Louise Abate, who testified that she was 22 years old and had known the petitioner for two years (R. 11a); that in January, 1942, petitioner took a trip to Miami, Florida; that she did not know when he left Camden, nor did she discuss the trip with him (R. 11a); that she received three telegrams from petitioner and that he telephoned her a few times (R. 12a-13a); that she at length told petitioner over the telephone that she was going to Florida for a vacation (R. 14a); that he objected because the weather was bad but that she insisted; that she asked him if he would pay the fare and he agreed to do so after talking to her father and receiving his consent (R. 14a); that petitioner made the reservation for the trip and paid the fare (R. 16a); that she took a plane from Philadelphia, Pennsylvania to Miami, Florida (R. 17a); that petitioner met her at the airport

in Florida and wanted to get her a room but she asked to be taken to his room at the President Madison Hotel to wash up before determining where she would stay (R. 27a); that she decided to stay with him and despite his objection, she insisted (R. 27a); that she had sexual relations with him a few times (R. 28a); that she ate her meals with petitioner and was continually in his company; and that after a ten days' stay petitioner paid her train fare to Philadelphia (R. 29a).

The next witness was Albert Tuller who was a clerk at the cigar stand in the President Madison Hotel. He testified that he saw both Miss Abate and the petitioner in the lobby of the hotel (R. 35a).

The Government then called Leon Kramer, the owner of the said cigar stand, who likewise testified that he saw the petitioner and Miss Abate on the beach and in the lobby (R. 36a).

Anna Johnson, a chambermaid, was the next witness. She testified that the petitioner and Miss Abate occupied the same room at the hotel and that although the room contained a single bed as well as a double bed, only the latter was used. She testified further that she found breakfast service in the room, sometimes for one, sometimes for two (R. 38a).

The final Government witness was Solomon Cohen, the manager of the hotel. He testified that defendant was registered from January 23, 1942 to February 22, 1942; that he paid $6.70 per day till February 1st, when the rate became $10.00 per day, which was "a seasonal jump" (R. 41a); that he had a record of only one occupant; that he had a record of telephone calls to Camden, one on January 23rd for $12.15, one on January 27th for $70.65, one on January 29th for $23.95, one on January 31st for $1.95 (R. 42a-43a).

After the Government had rested, petitioner moved for a directed verdict which motion was refused. The petitioner thereupon rested without offering any testimony and submitted certain points requesting the judge to give the jury binding instructions to render a verdict of not guilty on each count (R. 71a).

The trial Judge instructed the jury to return a verdict of not guilty on Count 2 of the indictment. The jury returned a verdict of guilty on Count 1 and not guilty on Count 3.

Petitioner filed a motion for a new trial (R. 74a) and the said motion was overruled and he was sentenced to a term of six months imprisonment and to pay a fine of $1500.00 (R. 76a).

An appeal was taken to the Circuit Court of Appeals for the Third Circuit and the judgment of the District Court was affirmed (R. 84a).

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## II

## BASIS OF JURISDICTION

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The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347).

## III

## QUESTIONS PRESENTED

1. Was the White Slave Act (the Mann Act) intended to apply to a situation where there is no element of prostitution or commercialized vice?

2. Should not this Court, in determining the true meaning of an Act of Congress, give serious consideration to the clear declarations of the framers of the Act as contained in the account of the legislative proceedings, and the opinions of the then Attorney General concerning the scope of the Act?

3. Was there sufficient evidence to submit to the jury on the question of petitioner's intent where the uncontradicted and unchallenged testimony of the government's principal witness negatives the existence of such intent?

4. Is it not the duty of a trial Judge to direct a verdict of not guilty where the circumstantial evidence presented does not exclude every hypothesis but that of guilt?

## IV

## REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. The Mann Act was never intended to apply to a case of simple fornication, but the Circuit Court felt bound to follow the decision of this Court in *Caminetti v. United States,* 242 U. S. 470 (1916).

2. The decision in the *Caminetti* case has never been, but should be, reviewed by this Court in view of the fact that

(a) It was a decision by a Court divided five to three;

(b) The majority opinion is based upon an erroneous theory of statutory construction which has long since been discarded by this Court.

3. There was insufficient evidence to submit to the jury.

4. There is a conflict in the decisions of this Circuit on the question of the duty of a trial Judge in determining whether a case involving circumstantial evidence should be submitted to the jury. The decision in the present case is in conflict with other recent decisions of this Circuit and the majority of the other Circuits.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit commanding that Court to certify and to send to this Court for its review

and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings herein; and that the judgment of the Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

WILLIAM A. GRAY,
*Counsel for Petitioner.*

## BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

### I

### OPINION BELOW

The opinion for the Circuit Court of Appeals for the Third Circuit, filed January 25, 1943, has not yet been officially reported, but a copy is to be found in the record (R. 77a).

### II

### STATEMENT OF THE CASE

Petitioner seeks to review the judgment of the Circuit Court of Appeals for the Third Circuit, filed January 25, 1943, affirming his conviction and sentence entered in the United States District Court for the District of New Jersey on July 30, 1942, after a trial before the Honorable John Boyd Avis and a jury.

The facts have been set forth in the foregoing petition (pp. 1-4) and will not be repeated.

## III

## ARGUMENT

### 1. The Mann Act Was Never Intended to Apply to the Present Circumstances

The facts herein disclose a case of fornication and nothing more.

In its opinion, the Circuit Court determined that since this Court had overruled, in the case of *United States v. Caminetti*, 242 U. S. 470, the contention that the Mann Act applied only to cases of commercialized vice and prostitution, it would not consider the argument made by appellant in the instant case.[1] We shall not stop to consider whether the Circuit Court was duty-bound to follow a 1916 decision of this Court without any analysis thereof. Cf. *Perkins v. Endicott Johnson Corp.*, 128 F. 2d 208, 217; aff'd. 87 L. ed. 329; 63 S. Ct. 339. We do, however, urge this Court to reconsider its divided decision and hold that the Mann Act should not be applied to a situation involving the facts of the case at bar.

The majority opinion in the *Caminetti* case apparently recognized the existence of the right of a court to consider congressional reports in reaching the true meaning of a legislature in cases involving the interpretation of a statute. However, the Court then determined that the meaning of the Mann Act was clear and therefore no recourse to any source was necessary to determine legislative intent.

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[1] cf. *Spies v. United States*, ..... U. S. .....; 87 L. ed. 342, 343; 63 S. Ct. 364, 365.

The dissenting Justices, on the other hand, considered the purpose and historical background of the Act and concluded that it was meant to apply only to cases of true "white slavery"; that is, to cases of prostitution and commercialized vice.

Our point is that it is anomalous to call the language of a statute clear where previous federal decisions had found it ambiguous (cf. *Welsch v. United States*, 220 F. 764, 771) and where this Court itself divided five to three in its result.

However, even if it be assumed arguendo that the language of this Act is clear, this Court has recently said in *Harrison v. Northern Trust Co.*, U. S. ; 87 L. ed. 320, 322; 63 S. Ct. 361, 363:

> "But words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on "superficial examination"' ".

In this connection, it is interesting to note several of the authorities relied upon by Mr. Justice Jackson in his dissenting opinion in the case of *United States ex rel. Marcus v. Hess*, U. S. ; 87 L. ed. 374, 384; 63 S. Ct. 379, 390, wherein he quoted from *United States v. Katz*, 271 U. S. 354, in which the present Chief Justice said:

> "All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

And what is most amazing, in *American Tobacco Co. v. Werckmeister*, 207 U. S. 284, Justice Day, writing in

1907, *nine* years before his opinion in the *Caminetti* case, adopted the point of view which we are presently urging and said:

> "But in construing a statute we are not always confined to a literal reading, and may consider its object and purpose, the things with which it is dealing, and the condition of affairs which led to its enactment, so as to effectuate rather than destroy the spirit and force of the law which the legislature intended to enact.
>
> It is true, and the plaintiff in error cites authorities to the proposition, that where the words of an act are clear and unambiguous they will control. But while seeking to gain the legislative intent primarily from the language used, we must remember the objects and purposes sought to be attained."

The language of Mr. Justice Frankfurter in his dissenting opinion in the case of *United States v. Monia,* U. S. ; 87 L. ed. 297, 301; 63 S. Ct. 409, 412-13, is especially applicable:

> "This question cannot be answered by closing our eyes to everything except the naked words of the Act of June 30, 1906. The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification. * * * A statute, like other living organisms, derives significance and sustenance from its environment, from which it cannot be severed without being mutilated."

We can find no other case of statutory construction in any jurisdiction in which the Court reached a result contrary to the *expressed* intent of the legislature enacting the law. We think a result so incongruous on its face should be reviewed by this Court.

The present tendency of this Court has been to rely strongly on legislative history and reports in determining the true meaning of a statute: *United States v. Hutcheson*, 312 U. S. 219, 236; *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U. S. 91, 101-102; *Apex Hosiery Co. v. Leader*, 310 U. S. 469; *United States v. San Francisco*, 310 U. S. 16. In his dissenting opinion in the first case above cited, Mr. Justice Roberts said (pp. 244-5):

> "The title and the contents of that Act, as well as its legislative history demonstrate beyond question that its purpose was to define and limit jurisdiction * * *."

See also *United States v. Local 807*, 315 U. S. 521.

It is interesting to note that the Mann Act, in Section 8, provides that it shall be known and referred to as the "White Slave Traffic Act". We contend that this fact, along with the stated purpose of the Act as expressed by its sponsor,[2] compels the conclusion that the Act was certainly never meant to apply to a case of simple fornication. As was said in *United States v. Dickerson*, 310 U. S. 554, 562:

> "The meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction."

The Court in the *Caminetti* case completely overlooked another rule of statutory construction, to wit, that a criminal statute must be strictly construed. The application of this rule in conjunction with the reports in the Congressional Record and the opinion of the then Attorney General (Dissenting Opinion in *United States v. Caminetti*, 242 U. S. 470, 498-499) would lead with compelling force

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[2] cf. *United States v. Monia*, 87 L. Ed. 297, 300; *United States ex rel. Marcus v. Hess*, 87 L. ed. 374, 378.

to a reversal of the *Caminetti* case: *Prussian v. United States*, 282 U. S. 675; *Farmer v. United States*, 128 F. 2d 970.

We contend that the *Caminetti* case was wrongly decided and urge its reversal. We might point out, however, that the facts and the indictment herein do not approach those in that case. Here, the indictment charges, and the facts establish, at most illicit sexual intercourse. In the *Caminetti* and *Diggs* cases, the indictment charged and it was proved, that the girls were transported for the purpose of debauchery and for the purpose of making them the concubines and mistresses of the defendants. In the related *Hays* case, the indictment charged defendant with transporting an unmarried woman under eighteen years of age, with the intent to induce her to engage in prostitution, debauchery and other immoral purposes.

A search of the cases in the past ten years reveals no conviction sustained for violation of the Mann Act where the facts show the defendant to be guilty of fornication only.

We urge this Court to review the conviction in this case to settle finally the question of the scope of the Mann Act.

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**2. There Was Insufficient Evidence to Submit to the Jury**

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The sole question in this case was whether petitioner intended, at the time he arranged to pay for the woman's fare from Camden, New Jersey to Miami, Florida, to have sexual relations with her upon her arrival. The element of persuasion and enticement was removed by the trial judge's direction of a verdict of not guilty on Count 2 of the indictment.

There is no denial that petitioner paid for the transportation and that he had intercourse with the woman. It was necessary for the Government to prove, however, that this intent was formed at the time the interstate journey was planned since it is well settled that the commission of an immoral act at the end of an interstate journey does not constitute a violation of the Act: *Yoder v. United States*, 80 F. 2d 665, 670; *Sloan v. United States*, 287 F. 91, 93; *Fisher v. United States*, 266 F. 667, 670; *Biggerstaff v. United States*, 260 F. 926, 928. But we contend that her testimony, uncontradicted and unchallenged in any way or by anyone, conclusively demonstrates that petitioner did not have the intent charged.

We quote the pertinent testimony upon this point:

"Q. Did you discuss the trip with him before he left?

A. No, I did not.

Q. Did he say anything to you about his going?

A. I knew he was going.

Q. Through him or through some other means?

A. Through him.

Q. He told you?

A. Yes.

Q. Did you have any other conversation with him at that time?

A. No." (R. 11a-12a)

* * * * * * *

"Q. Did you have conversations with him about Florida when he called you?

A. Not the first few times.

* * * * * * *

"Q. Did you eventually have a conversation with him in that respect?

A. Yes, I did * * * That I was coming down to Miami for a vacation." (R. 14a)

* * * * * * *

"Q. What was the rest of the conversation?

A. Well, he objected at first and said that the weather was not good at the time, and *he did not think I should go down, but I insisted and told him I was going there anyhow,* and then he asked me how I was going to get there and I *asked him if he would pay for the fare.*

Q. What did he say to you?

A. Well he would not answer me. *He said, 'I would like to speak to your father first.'* " (R. 14a)

* * * * * * *

"Q. What did he say this time?

A. Well, *after my father had gave his consent* he said, 'I will make reservations for you and call you up again and let you know just when to come down.' " (R. 15a-16a)

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"Q. Where did you go from the airport?

A. He wanted to get me a place to stay. He wanted to get me my room.

The Court: Where did you go?

The Witness: I asked him to take me to his room as I wanted to wash up first and rest, and then I would decide where I would stay.

* * * * * * *

"Q. Did you get to Mr. Reginelli's room?

A. Yes.

Q. Where was it?

A. At the President Madison Hotel.

* * * * * * *

"Q. What happened after you got to the room?

A. Well, when I got there I decided I did not want to stay alone so I *asked to stay with him. He objected at first but I insisted.*

Q. You insisted on staying with him?

A. Yes.

Q. When you met him first, did he say whether or not he had any other room to take you to?

A. No, but he said he would get me a room." (R. 27a-28a)

This testimony was elicited on *direct* examination, in response to questions asked by the Government attorney. The Government did not in any way attack this witness's testimony. Petitioner's counsel asked no questions on cross examination.

We submit that the action of the trial Judge and the verdict of the jury are sustainable only if the above quoted testimony is disbelieved and, under the authorities, it would be highly improper to do so: 32 C. J. S., page 1089, Section 1038; cf. *Quock Ting v. United States,* 140 U. S. 417.

This is not the case of an improbable story, filled with inconsistencies, told by someone unworthy of belief: cf. *United States v. Simon,* 119 F. 2d 679, cited in the opinion of the Circuit Court. Rather, it is the case of a perfectly consistent story told by the principal witness for the Government and relied upon by it for the conviction.

Under these circumstances, we urge this Court to adopt the rule that, in a criminal case, the testimony of a prosecution witness which is uncontroverted and unchallenged, may not capriciously be disregarded by either the trial Judge or the jury.

It is incredible that any criminal intent in petitioner can be found if the woman's testimony is believed. Surely

there is not that clear and convincing evidence which the authorities require: cf. *Alpert v. United States*, 12 F. 2d 352, 354.

We contend that it was error for the trial Judge to submit this case to the jury.

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**3. The Evidence Being Circumstantial and Not Excluding Every Hypothesis but That of Guilt, the Trial Judge Erroneously Permitted the Case to Go to the Jury**

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Admittedly, the government's case rests wholly upon circumstantial evidence and the rule, supported by a host of cases in all jurisdictions, is that unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused, and where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of an appellate court to reverse a judgment of conviction.

The Circuit Court adopts the view that a defendant is protected if the trial Judge properly instructs the jury on the rule of circumstantial evidence. We contend that this is in conflict with the previous rule of the Third Circuit. (*United States v. Tatcher*, 131 F. 2d 1002; *United States v. Russo*, 123 F. 2d 420), and also the rule of the majority of other jurisdictions (*Leslie v. United States*, 43 F. 2d 288, 290).

In the *Tatcher* case, the court said (p. 1003):

> "It would be equally consistent with the evidence to infer that all the merchandise not stolen, broken or found on the premises was sold and the proceeds used to pay the business and personal expenses of the defendant and his partner as to infer that all or any

> part of that merchandise was concealed by the defendant. To justify conviction of crime where the evidence relied upon is circumstantial in nature the evidence must be such as to exclude every reasonable hypothesis but that of guilt * * *"

By the same token, in the case at bar, it would be equally consistent with the evidence to infer that petitioner had no desire for or thought of any immoral purpose when he arranged for the woman's transportation—and, at any rate, the evidence certainly does not exclude every hypothesis but that of guilt.

It seems incredible that petitioner be charged with the criminal intent necessary where the uncontradicted evidence shows his opposition to the trip, his ascertaining from the woman's father whether he would consent to her leaving, his suggestion, upon her arrival in Florida, that he obtain a room for her and his objection to her staying with him.

We submit that the case against this petitioner is the weakest ever to go to a jury in a Mann Act prosecution. A comparison of the facts of other Mann Act cases wherein there have been reversals because of the failure of the trial Judge to direct a verdict makes even more striking the lack of evidence in the present case: *United States v. Grace*, 73 F. 2d 294; *Hunter v. United States*, 45 F. 2d 55.

## CONCLUSION

For the reasons set out above, it is respectfully submitted that this case is one which justifies the granting of a Writ of Certiorari and thereafter reviewing and reversing the adverse decision.

William A. Gray,
*Counsel for Petitioner.*

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## CITATIONS

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# In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 767

MARCO REGINELLI, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the circuit court of appeals (R. 77–84) is not yet reported.

### JURISDICTION

The judgment of the circuit court of appeals was entered January 25, 1943 (R. 84). The petition for a writ of certiorari was filed February 26, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

## QUESTIONS PRESENTED

1. Whether *Caminetti* v. *United States,* 242 U. S. 470, in which this Court held that the interdictions of the Mann Act are not limited to instances of commercialized vice, should be overruled.

2. Whether there was sufficient evidence to warrant submission of the question of petitioner's guilt to the jury.

## STATUTE INVOLVED

The Act of June 25, 1910, c. 395, Sec. 2, 36 Stat. 825 (18 U. S. C. 398), known as the Mann Act, provides:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery,

> or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

## STATEMENT

Petitioner was indicted on April 21, 1942, in the District Court for the District of New Jersey upon three counts charging violations of the Mann Act, *supra* (R. 3a–5a). The first count, upon which petitioner was found guilty,[1] charged that petitioner aided and assisted in obtaining transportation for one Louise Abate from Camden, New Jersey, to Miami, Florida, with intent and purpose "to induce, entice, and compel" her to engage in illicit sexual intercourse with him. He was sentenced to six months in jail and to pay a fine of $1,500 (R. 2a). Upon appeal to the Circuit Court of Appeals for the Third Circuit, the judgment was affirmed (R. 84).

[1] The trial court dismissed the second count (R. 62a), and the jury returned a verdict of not guilty on the third count (R. 2a).

The evidence which supports the verdict may be summarized as follows:

In January 1942, petitioner, who lived in Camden, New Jersey, took an extended vacation at Miami, Florida (R. 11a, 43a). While en route to Florida, he sent telegrams to Miss Abate in endearing terms. Upon his arrival, he wired her his hotel address, expressed the sentiment that he wished she were "here," and also advised her that he would telephone her that evening (R. 13a). He called her that night, the toll charge being $12.15, again four days later, the toll charge being $70.65, and again on January 29, when the toll charge was $23.95 (R. 13a, 42a). Pursuant to an agreement reached in these conversations, petitioner made the necessary arrangements for the woman to go from Camden to Philadelphia by taxicab and from Philadelphia to Miami by airplane (R. 14a–17a). Petitioner met her at the airport at Miami, and, not having arranged any place for her to stay, took her directly to his hotel room. She stayed with him for ten days, sleeping in the same bed, and they had sexual relations. (R. 27a–28a, 38a.)

## ARGUMENT

### I

Petitioner urges (Pet. 9–13) that this Court reconsider and overrule its decision in *Caminetti* v. *United States,* 242 U. S. 470, which was ren-

dered in 1917. Since that time the rule of the *Caminetti* case that the Mann Act applies to non-commercialized vice, has been relied upon by the lower federal courts in numerous cases.[2] By implication it was recognized again by this Court in *Gebardi* v. *United States*, 287 U. S. 112, 120.[3] And this Court has denied certiorari in cases involving non-commercialized vice.[4] It may also be said that Congress, by allowing the statute to remain unamended, has acquiesced in this Court's construction of the statute, notwithstanding the legislative history upon which the dissenting opin-

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[2] See, e. g., *Francis* v. *United States*, 264 Fed. 513, 514 (C. C. A. 6); *Elrod* v. *United States*, 266 Fed. 55, 57 (C. C. A. 6); *Burgess* v. *United States*, 294 Fed. 1002, 1003 (App. D. C.); *Suslak* v. *United States*, 213 Fed. 913, 917 (C. C. A. 9); *Malaga* v. *United States*, 57 F. (2d) 822, 825 (C. C. A. 1); *Caballero* v. *Hudspeth*, 114 F. (2d) 545, 547 (C. C. A. 10); see also *Kelly* v. *United States*, 277 Fed. 405, 408 (C. C. A. 4); *Nokis* v. *United States*, 257 Fed. 413 (C. C. A. 8); *Blackstock* v. *United States*, 261 Fed. 150 (C. C. A. 8), certiorari denied, 254 U. S. 634; *Corbett* v. *United States*, 299 Fed. 27 (C. C. A. 9); *Drossos* v. *United States*, 16 F. (2d) 833 (C. C. A. 8); *Welsch* v. *United States* 220 Fed. 764 (C. C. A. 4); *Tobias* v. *United States*, 2 F. (2d) 361 (C. C. A. 9), certiorari denied, 267 U. S. 593; *Yoder* v. *United States*, 71 F. (2d) 85, 88; 80 F. (2d) 665 (C. C. A. 10); *Neff* v. *United States*, 105 F. (2d) 688 (C. C. A. 8).

[3] See also *Hansen* v. *Haff*, 291 U. S. 559, 563; *Brooks* v. *United States*, 267 U. S. 432, 437; *Armstrong Co.* v. *Nu-Enamel Co.*, 305 U. S. 315, 333.

[4] *Ghadiali* v. *United States*, 17 F. (2d) 236 (C. C. A. 9), certiorari denied, 274 U. S. 747; *Hart* v. *United States*, 11 F. (2d) 499 (C. C. A. 9), certiorari denied, 273 U. S. 694; *Hamilton* v. *United States*, 255 Fed. 511 (C. C. A. 8), certiorari denied, 249 U. S. 610.

ion in the *Caminetti* case and petitioner here (Pet. 9–13) rely.[5]

Under these circumstances, there would appear to be no impelling reason, nor does petitioner assert any, for this Court to overrule the *Caminetti* case. Cf. *Goldman* v. *United States,* 316 U. S. 129, 135–136.

## II

Petitioner's contention that the evidence is insufficient to show that it was his intention that the woman be transported for immoral purposes (Pet. 13–17) is without substance. As the circuit court of appeals held, there was ample evidence from which the jury may have inferred that petitioner's "purpose in utilizing the facilities of interstate commerce for the transportation of the woman to Miami was so that he might have sexual intercourse with her there" (R. 81–82). This evidence was summarized by the court below (R. 80): "* * * there is Reginelli's telegram expressing his wish that she were in Miami and the further facts that it was he who made all necessary arrangements and provisions for her transportation from the north; that he was expectantly awaiting her arrival at the Miami airport; and that, without having procured a separate

[5] Cf. *Helvering* v. *Griffiths*, No. 467, this Term, decided March 1, 1943; *United States* v. *Elgin J. & E. Ry.*, 298 U. S. 492, 500; *Beale* v. *United States*, 71 F. (2d) 737, 739 (C. C. A. 8).

room for her, he went directly with her to his hotel and to his room where he thereafter engaged her in immoral practices."[6]

But petitioner contends (Pet. 14–16) that any inference from this evidence as to his immoral purpose is overcome by the so-called exculpating testimony of the woman to the effect that, over his objections, she persuaded petitioner to provide her transportation to Miami "for a vacation" and that it was upon her insistence that she lived with him in a hotel room there (R. 14a, 27a–28a). As the court below held, however, "The probabilities of the woman's testimony were for the jury whose duty it was to accept and interpret such thereof as seemed credible and to reject the improb-

[6] The jury was specifically advised that they could not return a verdict of guilty unless they found that the transportation was for an immoral purpose. The court charged (R. 65a–66a):

"* * * Of course, sexual intercourse between persons who are not married is a violation of that statute so far as the intent is concerned, but the mere fact that sexual intercourse was had between this girl and this defendant in Florida in itself is not evidence of a violation of this federal statute; that in itself cannot be, and I do not care how severe your morals may be with relation to a matter of that kind, you should not use that alone against the defendant in arriving at a verdict in this case. He is charged with a specific crime, and that crime involves the intention at the time that he made the arrangements, if he did, to have this girl go to Florida, and that at that time he intended to use her for immoral purposes when that arrangement was made, if it was made under the evidence, and that is the gist of this offense."

able. * * * Only by assuming the jury's province could the court have declared that Reginelli's opposition to the woman's trip to Miami and to her sharing his room with him while there, as related by the woman, was real and that it excluded Reginelli from participation in the woman's interstate transportation and its purpose." (R. 80). Cf. *Glasser* v. *United States,* 315 U. S. 60, 77; *United States* v. *Simon,* 119 F. (2d) 679, 682 (C. C. A. 3), certiorari denied, 314 U. S. 623; *Ryan* v. *United States,* 99 F. (2d) 864, 868 (C. C. A. 8), certiorari denied, 306 U. S. 635; *State* v. *Bentley Bootery,* 128 N. J. L. 555 (1942). Without objection by petitioner, the trial court instructed the jury that "You are to take from the testimony and evidence that has been given to you what you say is true and believable, and from that render your verdict" (R. 65a).

This is not a case where the entire testimony of a witness must be accepted because it is not fairly "open to challenge as suspicious or inherently improbable." Cf. *Chesapeake & Ohio Ry.* v. *Martin,* 283 U. S. 209, 214. On the contrary, insofar as the woman's story undertakes to establish petitioner's innocent intent, it is, we submit, inconsistent with her incriminating testimony and inherently improbable when measured with the accepted standards of good moral conduct. In the first place, it strains credulity to say, as petitioner

does in effect, that the trial court should have accepted as verity the woman's claim that petitioner spent more than $100 in telephone tolls in stressing his "opposition to the trip," and that when she arrived by airplane, as he had arranged, he actually voiced "objection to her staying with him" (Pet. 18). Secondly, unless petitioner had an immoral intent at the outset, it would seem that he would have arranged for separate living quarters for her before she arrived; at least he would not have taken her directly to his own hotel room unchaperoned and unannounced, even for the limited purpose of letting her "wash up first and rest" (see R. 27a, cf. R. 37a and 41a).

For the same reason, there is no merit to petitioner's contention (Pet. 17–18) that the "evidence is as consistent with innocence as with guilt." Apart from the questionable truth of the so-called exculpating testimony, the court below aptly said, it "was at best but slight evidence of what was actually in the defendant's mind" (R. 82). For the most part, the woman's evidence goes only to show what was in her own mind, and does not in any genuine sense tend to prove that petitioner's intention was one of unrelieved gallantry. Petitioner's alleged protest against her coming and his suggestion against their living in his hotel room did no more than present an inference which the jury was entitled to weigh along

with all the other evidence in the case. The case having been submitted to the jury under instructions (R. 63a–70a) which were "eminently fair to the defendant" (R. 84),[7] no sufficient reason appears why the concurrence of the trial court, the jury, and the circuit court of appeals as to the sufficiency of the evidence should not be accepted. *Delaney* v. *United States,* 263 U. S. 586, 589–590. See also *Patton* v. *Texas and Pacific Railway Co.,* 179 U. S. 658, 660.[8]

**CONCLUSION**

The decision below is correct, and there is involved no conflict of decisions or question of gen-

[7] The court instructed the jury: "* * * unless there is substantial evidence of facts, which excludes every other hypothesis but that of guilt, it is the duty of the jury to return a verdict for the accused" (R. 67a). See also instructions Nos. 12 and 13, given at petitioner's request (R. 69a). The court further charged "* * * If the evidence introduced by the Government merely raises suspicion and does not point to guilt with compelling force, your verdict must be not guilty" (R. 69a).

[8] *United States* v. *Grace*, 73 F. (2d) 294 (C. C. A. 2), and *Hunter* v. *United States*, 45 F. (2d) 55 (C. C. A. 4), cited by petitioner to show that this case "is the weakest ever to go to a jury in a Mann Act prosecution" (Pet. 18), are wide of the mark. In neither of those cases was there any evidence from which the jury could have inferred that the particular interstate journeys laid in the indictments were initiated with an immoral purpose. Cf. *Burgess* v. *United States*, 294 Fed. 1002 (App. D. C.); *Corbett* v. *United States*, 299 Fed. 27 (C. C. A. 9); *Tobias* v. *United States*, 2 F. (2d) 361 (C. C. A. 9), certiorari denied, 267 U. S. 593.

eral importance. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
*Solicitor General.*
WENDELL BERGE,
*Assistant Attorney General.*
OSCAR A. PROVOST,
*Attorney.*

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IN THE

# SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1942.

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No. 767.

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MARCO REGINELLI,
*Petitioner,*
*vs.*
UNITED STATES OF AMERICA,
*Respondent.*

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## PETITION FOR REHEARING.

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## TABLE OF CASES.

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UNITED STATES OF AMERICA.

## PETITION FOR REHEARING.

*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Marco Reginelli, by his attorney, William A. Gray, petitions the Court for a rehearing of the petition for writ of certiorari previously filed and denied in the above matter, for the following reasons:

1. Your petitioner has been convicted of the heinous offense of violating the White Slave Act and should be afforded the opportunity to present to this Court his

argument that the statute under which he was convicted does not apply to the facts of this case.

2. The statute involved has been construed only once by this Court in an opinion by a divided Court over twenty-five years ago in the case of *Caminetti v. United States*, 242 U. S. 470, and the case then before the Court is clearly distinguishable from the case at bar.

3. The *Caminetti* case was based upon an erroneous theory of statutory construction and should be reviewed to determine the true scope of the White Slave Act.

4. The tenor of the recent decisions of this Court concerning statutory construction and those of the various Circuit Courts of Appeal concerning the construction of the Mann Act is such as should justify a review of this conviction.

*Point 1.*

Due caution requires the review of any case of a conviction for a heinous offense where there is the remotest possibility that the conviction was erroneous. Especially is this true where the very jurisdiction of the court is questioned—that is, where there is some doubt as to the applicability of the statute under which the indictment was framed.

The petitioner was indicted and convicted for violation of the White Slave Act. The evidence established that he paid for the interstate journey of a girl from her home in Camden, New Jersey (which was also petitioner's residence) to Miami, Florida, where he was then vacationing. The trial Judge directed a verdict of not guilty on the count of the indictment charging "inducing and enticing". (R. 63a).

It is admitted that the parties were guilty of fornication in Florida, and the sole question urged herein is whether that constitutes a violation of the Mann Act.

In that this Court has not construed the Mann Act for over twenty-five years and in that the precise question now raised has never been passed upon, petitioner respectfully requests this Court to hear his argument on the limited issue presented—namely, whether the Mann Act applies to the facts of his case.

*Point 2.*

The case of *Caminetti v. United States*, 242 U. S. 470, does not control the facts of the case at bar. Here the indictment charges and the evidence establishes at most "illicit sexual intercourse". In that case it was charged and proved that the girls had been transported for purposes of debauchery and concubinage, expressly within the language of the statute.

Thus, if petitioner's offense falls within the statute at all it is because of the words "or for any other immoral purpose".

Petitioner contends, and urges this Court to hear argument on the following proposition—namely, that the principle of *ejusdem generis* limits the connotation of the words "any other immoral purpose" to such as are of like character with debauchery or prostitution and mere fornication falls short of that description. Cf. *Hansen v. Haff*, 291 U. S. 559, 562. See also *United States ex rel Huber v. Sibray*, 178 F. 150 (Annotation in 78 L. ed. 973, 976).

*Point 3.*

Although it is our present position that the *Caminetti* case is no authority in support of the conviction herein, we believe this Court should review its decision there in view of the erroneous theory of statutory construction upon which it was based.

Petitioner should be entitled to a hearing where he contends that the statute under which he was indicted has no application to the facts of his case: Cf. *Viereck v. United States*, U. S. , 87 L. ed. 529, 531.

*Point 4.*

In the past ten years there has been no conviction sustained in any court for violation of the White Slave Act where the defendant was guilty of fornication only and where he was not guilty of transporting women for the purpose of prostitution or debauchery.

We believe that the statute should be limited to those cases in which true "white slavery" is involved because its sponsor stated that that was its purpose: Cf. *United States v. Monia,* U. S. , 87 L. ed. 297, 300; *United States ex rel. Marcus v. Hess,* U. S. , 87 L. ed. 374, 378.

In any event, petitioner should be entitled to a hearing by this Court in view of its recent decisions involving statutory construction: *Spies v. United States,* U. S. 87 L. ed. 342, 343; *Harrison v. Northern Trust Co.,* U. S. , 87 L. ed. 320, 322; *United States v. Monia, supra; United States ex rel. Marcus v. Hess, supra; Helvering v. Griffiths,* U. S. , 87 L. ed. 597; *Pacific Coast Dairy v. Department of Agriculture,* U. S. , 87 L. ed. 560, 563; *Federal Security Administrator v. Quaker Oats Co.,* U. S. , 87 L. ed. 540; *Viereck v. United States, supra; Fisher Music Co. v. Witmark,* U. S. , 87 L. ed. 742.

Wherefore your petitioner prays this Court to reconsider its refusal to grant certiorari and to afford to him the opportunity to present his argument for review.

All of which is respectfully submitted.

WILLIAM A. GRAY,
*Counsel for Petitioner.*

*Certificate of Counsel.*

The foregoing petition is believed to be well-founded in point of law and has not been filed for purposes of delay.

WILLIAM A. GRAY,
*Counsel for Petitioner.*